



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/880,738	06/13/2001	Willis L. Winstrom	POC 01-1-1	4953

23531 7590 06/05/2003

SUITER WEST PC LLO  
14301 FNB PARKWAY  
SUITE 220  
OMAHA, NE 68154

EXAMINER

LEVY, NEIL S

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 06/05/2003

**BEST AVAILABLE COPY**

13

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No. <b>270738</b>	Applicant(s) <b>WINSTROM</b>
Examiner <b>MEC/ky</b>	Group Art Unit <b>1516</b>

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

### Status

- ☒ Responsive to communication(s) filed on 3/24/03
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

- ☒ Claim(s) 301, 303-310, 322-333 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 301, 303-310, 322-333 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

### Applicant Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

### Attachment(s)

- |  |  |
|--|--|
| <input type="checkbox"/> Information Disclosure Statement(s), PTO-1449, Paper No(s). _____<br><input type="checkbox"/> Notice of Reference(s) Cited, PTO-892<br><input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review, PTO-948 | <input type="checkbox"/> Interview Summary, PTO-413<br><input type="checkbox"/> Notice of Informal Patent Application, PTO-152<br><input type="checkbox"/> Other _____ |
|--|--|

Office Action Summary

**BEST AVAILABLE COPY**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 305, 306, and 310 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The rejection of record is maintained as follows. Claim 305 is duplicative of 303; 306 of 304 "at least about" is indefinite, please delete "at least" or "about"; to overcome this rejection of claim 310. The claim can be interpreted to mean 11 mesh is about 10 mesh. At least about 10 mesh is thus anything less than 11 mesh.

Claims 301, 303, 310, 322-333 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no "filtration solids" antecedent for the said filtration-@ line b of claim 301; or of 8<sup>th</sup> line of 322, or @ 6<sup>th</sup> line of 320, or line 3 of 330.

Claims 301, 303-310 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Forber et al DD138273.

The rejection of record is maintained. The instant method is to unspecified microbial infection oral prophylaxis or treatment of a medicated supplement of an antibiotic in granule form, of a potency of 10g/lb to 200 or 300g/lb (claims 303-306). The method steps of culturing and treating are not seen as of patentable weight, as they have no effect of the treatment or prophylaxis of the claimed method. At least, applicant has not shown any criticality or presented any objective evidence of any effect

whatsoever, of the process of preparation affecting the claimed method of oral administration to an animal of an unspecified antibiotic providing any unspecified prophylactic or therapeutic effect, over prior art administration. However, Forbes does in fact set forth use of waste products or secondary fermentation, alluded to as not before known (p.4, first full paragraph). As to applicants arguments regarding granular size-The claim to a "substantially uniform size," absent any particular size specification, is open to wide interpretation. We find the instant to provide a granulate or pellet by methods precluding imperfections (p.4, explanation-paragraph), indeed would produce, using the fluidized bed processing (p.5) substantially uniform granules. There are 89% tarimycin of a a product with 8% moisture (p.7) or over/0g/lb. (404g/454g/lb), or about 300g/lb., as of instant claims 303, 305 and moisture of instant 307, 326, 327, 331, 332. We find the moisture content, and antibiotic concentration obvious to adjust, where one mindful of the required heating conditions-claim 4 shows up to 115°, while the exemplified products were heated at 90°, to 8.4% moisture, or 111°, to 8% (p.7). Applicants arguments to cost of purified standardizer are not persuasive, either. Cost has no bearing on the claimed method of treatment or prophylaxis with an oral antibiotic, but even so, Forbes shows the use of the instant processes, thus obvious to utilize, depending upon the antibiotic concentration desired of end product. As to granulate size, one of ordinary skill in the art would be able to make the size desired, using the accepted standards for granule production with Forbes fluidized bed processing, thus inclusive of 80-10 mesh.

Art Unit: 1616

**BEST AVAILABLE COPY**

Applicant's arguments filed (3/26/03) have been fully considered but they are not persuasive. Applicants arguments have been considered and addressed above, to the extent persuasive, rejections have been withdrawn.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 308-4628. The fax phone number for the organization where this application or proceeding is assigned is 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

Levy/tgd  
May 27, 2003



NEIL S. LEVY  
PRIMARY EXAMINER